NEW YORK BANKERS ASSOCIATION NYBA

Via Electronic Submission

December 12, 2024

Commissioner Vilda Vera Mayuga
New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Dear Commissioner Mayuga:

The New York Bankers Association ("NYBA")[1] submits this comment letter in response to the New York City Department of Consumer and Worker Protection's ("DCWP" or "the Department") newly Proposed Amendment relating to the definition of "debt collector," published in the New York City Record on November 12, 2024[2] (the "Proposed Amendment" or the "proposal"). We share the Department's general goal of preventing abusive and predatory debt collection practices and we thank you for the opportunity to provide our views on this matter.

General Comments

The Proposed Amendment's unexpected expanded definition of Debt Collector to include original creditors collecting debts on their own behalf would, if applied to banks, result in significant harm both to New York City's banking industry, and to the millions of City residents who rely daily upon it.[3] Respectfully, we do not agree that the Proposed Amendment constitutes a mere "clarification" of an existing rule (the "Rule")[4]. Contrary to DCWP's assertion, its adoption would be a definitive change that circumvented required rule making processes and could potentially subject banks to a host of new, substantive City debt collection requirements in conflict with comprehensive State and federal regulations already governing how banks communicate with account holders on a range of matters, including payments.[5] It would saddle banks with an unwieldy and unsuitable regulatory framework designed to govern *third-party debt* collection, without yielding any enhancement to the broad range of consumer protections already applicable to bank customers under State and federal law.

Moreover, such a course reversal would be as sudden as it is stark. The Department's efforts to revise the City's debt collection rules to more closely align with State and federal law began in November 2022. Part of that alignment, as reflected in the Department's first proposed amendments published on November 4, 2022, was the exclusion of creditors collecting their debts in their own name from the definition of "debt

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[1] NYBA is comprised of the smaller community, mid-size regional, and large banks across every region of New York State. Together NYBA members employ nearly 200,000 New Yorkers, safeguard $2 trillion in deposits, and extend nearly $70 billion in home and small business loans. NYBA members also support their communities through an estimated $200 million in community donations and 500,000 employee volunteer hours.
[2] *See generally*, Consumer and Worker Protection, Notice, The City Record, Vol. CLI, No. 217, Nov. 12, 2024, at 5639-5640.
[3] *See generally*, Consumer and Worker Protection, Statement of Basis and Purpose of Proposed Rules, The City Record, Vol. CLI, No. 217, Nov. 12, 2024, at 5639-5640.
[4] *See generally*, The Rules of the City of New York, Title 6, Ch. 5, Sub. A, Pt. 6, § 5-76 (2024).
[5] *See*, Consumer and Worker Protection, Statement of Basis and Purpose of Proposed Rules, The City Record, Vol. CLI, No. 217, Nov. 12, 2024, at 5639-5640.

collector."[6] That exclusion remained consistent in the re-noticed proposed amendments (September 29, 2023) and again in the final published amendments (August 12, 2024). As such, the November 12, 2024 Proposed Amendment to revise the definition of "debt collector" to expressly include such creditors came after more than two years of consistent messaging precisely to the contrary.[7] This abrupt deviation left no opportunity for banks and other creditors to meaningfully assess and comment on the Rule.[8]

In both substance and process, therefore, the Proposed Amendment's speedy introduction and limited comment period underestimate its potentially seismic impact on New York City's banking sector. Plainly stated, its adoption will impose substantial operating burdens and costs on banks and their customers, without enhancing consumer protections. Worse, adoption of the Proposed Amendment will likely have a significant negative impact on the cost and availability of a range of safe and transparent credit products and workout/loss mitigation options currently available to New York City residents through banks. As we outline below, we are respectfully requesting that the Proposed Amendment be withdrawn or paused to allow for a fulsome and legally required comment period for all stakeholders.

I. Banks Should not be Subject to the Rule Because Banks are Fundamentally Different than Debt Collectors

DCWP's last-minute proposal to regulate banks and other original creditors in the same manner as third-party debt collectors should be rejected in its entirety. Banking operations – including but not limited to lending and collection activities – are already governed by a comprehensive web of federal and State consumer protection laws and regulations. Subjecting banks to the Rule's ill-fitting restrictions on *third-party* debt collection will only harm New York City consumers, without providing any additional consumer benefit.

State and federal statutes and legal rules governing debt collection generally distinguish between banks, on the one hand, and third-party debt collectors, on the other hand, in regulation and oversight. As noted, New York State's debt regulation excludes banks from its scope, as do multiple federal examples. These exclusions recognize the comprehensive regulatory framework already governing banks, which provides appropriate consumer protections for bank borrowers, while at the same time facilitating the banking sector's safe, transparent and largescale extension of credit on a daily basis to millions of New York City residents.

Supporting a regulatory distinction between banks and third-party debt collectors is a necessary and appropriate reflection of their distinct business models and the expectations of customers. Consumers voluntarily select their banks, and similarly choose from among the range of credit and loan products available through their bank. This

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[6] As published in both the November 4, 2022 and September 29, 2023 proposed amendments, "debt collector" was revised to mean (in pertinent part) "any person engaged in any business with the principal purpose of which is the collection of any debts or who regularly collects, or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another person…"

[7] Indeed, as seemingly recognized by the Department in its November 7, 2024 webinar, the Rule's definition of "debt collector" was widely understood to exclude such creditors.

[8] *See*, Consumer and Worker Protection, Notice, The City Record, Vol. CLI, No. 217, Nov. 12, 2024, at 5639-5640.

contrasts sharply with the typical relationship between a consumer and third-party debt collector, which is involuntary at inception and generally only forms after the collector independently acquires contractual rights to collect the consumer's debt – often after it has been charged-off by the issuing creditor. Bank customers, instead typically form lasting relationships with their banks, and frequently maintain multiple separate accounts with the same institution over time. Similarly, they may obtain numerous separate loans and credit extensions from the same bank over time, for matters as varied as consumer credit cards, automobile loans, or residential mortgages, to name a few. It is within this context – and not the involuntary, transient nature of the consumer- debt-collector relationship – that most banks routinely communicate with their customers on a range of matters, including but not limited to payments.

The Proposed Amendment threatens to confusingly merge these distinctions, with no consideration of the compliance costs imposed on creditors and, most importantly, the harms incurred by consumers. At a minimum, this can be expected to cause banks to reevaluate and potentially curtail their existing communications with customers, much of which is routine servicing, recurring, and does not relate to debt collection, but which may nonetheless be viewed as a potential violation of the Rule.

The harm to consumers going through difficult financial times will be immediate. When banks communicate with a customer regarding a past due debt, the purpose of the communication frequently is to avoid a default, help the customer get current on their account again, and/or avoid the account charging-off, and being placed with a third-party collector for collection or potentially a lawsuit. This intervention could happen through a modification of payment terms, loan forbearance, or another arrangement. Application of the Proposed Rule to banks and other original creditors will limit such communication, impairing customers' ability to receive information on available debt relief options such as forbearance or hardship programs which may allow for reduced payments to even keep the account current. This risk is greater for consumers with limited financial literacy who may not know to reach out to request information on these options.

The Proposed Amendment conflicts with the federal Fair Debt Collection Practices Act ("Regulation F" or "FDCPA")[9] and New York State law and policy that recognize the critical distinction between original creditors and debt collectors.[10] This distinction is reflected in Article 29-H of the New York General Business Law that distinctly defines "principal creditor" and "debt collector."[11] This distinction is also evident in how the New York State Department of Financial Services ("DFS") regulates debt collection practices through its Debt Collection Regulation, which is Part 1 of Title 23 of the New York Codes, Rules, and Regulations. Specifically, those DFS regulations separately define "original creditor" and "debt collector," the latter definition expressly excluding "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor."[12] This distinction is also found across other New York laws, including the Civil Practice Laws and Rules governing enforcement of default judgments, as highlighted in

[9] Fair Debt Collection Practices Act, 12 CFR Part 1006 ("Regulation F").
[10] *See Eric M. Berman, P.C. v. City of New York*, 25 N.Y.3d 684, 690 (2015) (recognizing state preemption occurs when a local government adopts a law inconsistent with New York State law).
[11] N.Y. Gen. Bus. Law § 600 (3, 7).
[12] 23 NYCRR 1.1 (e, f).

the lawsuit recently brought by ACA International, Inc. that seeks to enjoin these DCWP proposed rules. Not only do these New York state laws and regulations distinguish creditors from debt collectors in their defined terms, they also differentiate based on the types of obligations to which the parties are subject. For example, DFS regulations, including requirements to provide statements of consumer rights, debt validation notices, an itemized accounting of the debt, and restrictions on electronic communication apply to third party debt collectors and specifically exclude creditors. The Proposed Amendment clearly conflict with the state's approach to regulating the activities of debt collectors differently from those of creditors, by imposing the types of obligations that the state of New York intentionally chose not to require of creditors.

The Proposed Amendment thus jeopardizes important consumer benefits derived through the banking relationship, including but not limited to ongoing, regular communications with their institution of choice and constructive opportunities to avoid default. Consequently, and as a result also of the comprehensive State and federal consumer protections already applicable to banks, adoption of the Proposed Rule risks doing more harm than good for consumers.

II. Banks Already are Subject to Stringent State and Federal Oversight

As noted above, unlike debt collectors, banks are subject to comprehensive State and federal rules with respect to all aspects of their operations, including how and when they communicate with customers. Moreover, banks are subject to regular supervisory examinations by the Office of the Comptroller of the Currency ("OCC") and the New York State Department of Financial Services ("DFS"), to ensure compliance with those rules, and are subject also to regular internal and external audit requirements. It is no surprise, then, that banks collecting debts on their own behalf are potentially excluded from State and federal rules regulating third-party debt collectors.[13]

As discussed in more detail below, DCWP's Proposed Amendment would create significant confusion on the part of banks and their customers, as well as burdensome and unnecessary implementation barriers, by supplanting longstanding, well-understood and uniform national and statewide consumer protection requirements with a cumbersome municipal regulation intended to govern both banks and third-party debt collectors, notwithstanding their vastly different business models and regulatory environments. This will likely have a negative impact on the price and availability of bank-offered credit for New York consumers, potentially depriving them of consumer benefits available elsewhere throughout the rest of the State and country.[14]

[13] New York Codes, Rules and Regulations (NYCRR), 23 NYCRR 1.1; Fair Debt Collection Practices Act (FDPA), 15 USC 1692 (a)(6) et seq.

[14] Although not addressed here, it is reasonable to conclude that application of the Rule to banks may be subject to preemption under State and federal banking laws. We refer DCWP to comments submitted by the American Financial Services Association ("AFSA"), which NYBA hereby adopts and incorporates by reference. *See generally*, American Financial Services Association, Comment Letter re: Proposed Amendment of Rules Relating to Debt Collectors, New York City Department of Consumer and Worker Protection, December 10, 2024.

III. DCWP Failed to Provide Sufficient Time to Comment on the Proposed Amendment and to Implement the Rule

The final version of the Rule published by DCWP on August 12, 2024, defines the term “debt collector” to *exclude* banks and other original creditors collecting on their behalf unless they do so under a different name.[15] As noted above, this definition is consistent with that found in State and federal laws governing debt collection, which also could exclude banks.[16] Banks and other original creditors were similarly excluded from the definition of “debt collector” contained in the initially proposed version of the Rule, published in November 4, 2022 and the re-noticed proposed amendments from September 29, 2023.[17] Consequently, banks and other original creditors who now may be made subject to the Proposed Amendment have not had adequate notice and opportunity to comment on its provisions, due to a sense of detrimental reliance.

DCWP’s characterization of the Proposed Amendment as merely clarification, ignores the Rule’s express drafting history, analogous State and federal rules, and well-settled industry and consumer expectations. Its adoption would mark a sea-change in the regulation of New York’s banking industry and give rise to numerous burdensome and costly implementation challenges that don’t provide a countervailing benefit. In accordance with the requirements of the New York City Administrative Procedures Act (“CAPA”), the Rule should be re-proposed in its entirety to afford banks and other creditors a full, fair and meaningful opportunity to comment on its provisions, unless the latest proposed amendment of November 2024 is otherwise stricken.[18] If not, we will be forced to seek an alternative legal remedy.

Specific Comments

I. Contact Frequency - §5-77(b)(1)

The Rule’s requirements are tailored to the third-party debt collection industry and, if applied to banks, will cause significant consumer harm. The Rule imposes more stringent contact limitations than found under State and federal debt collection rules, and would prohibit communication attempts by banks via any method, more than three times in a seven calendar-day period at a customer level.

To the extent banks are made subject to the Rule, its provisions restricting contacts with a consumer should be applied at the *account–level* and not, as reflected in the current Rule, at the consumer-level. Consumer-level contact restrictions will adversely impact consumers if creditors are not able to have valuable conversations to

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[15] *See*, Department of Consumer and Worker Protection, Statement of Basis and Purpose of Rule, The City Record, Vol. CLI, No. 155, Aug. 12, 2024, at 4071.
[16] New York Codes, Rules and Regulations (NYCRR), 23 NYCRR 1.1; Fair Debt Collection Practices Act (FDCPA), 15 USC 1692 (a)(6) et seq.
[17] *See*, Department of Consumer and Worker Protection, Proposed Rule Amendment, The City Record, Vol. CXLIX, No.213, Nov. 4, 2022, at 5485; *See also*, Department of Consumer and Worker Protection, Proposed Rule Amendment, The City Record, Vol. CL, No. 188, Sept. 29, 2023, at 4995.
[18] *See*, New York City Administrative Procedures Act (CAPA) § 1043; *See also*, New York City Department of Consumer and Worker Protection, Frequently Asked Questions on new Rules for Debt Collectors, (2024). The need for re-proposal is underscored by the Rule’s current compliance deadline of April 1, 2025. The Rule’s requirements would impose substantial new, unprecedented and costly implementation burdens on banks, as well as significant operational challenges, with little or no opportunity to assess, let alone comment on, its provisions.

advise their customers on a range of matters, including the status of their various accounts, available resources such as financial literacy and anti-fraud tools, and a range of other matters. Once again, while such restrictions may be well suited to third-party debt collection, they do not reflect the nature of the voluntary relationship between a consumer and bank, which is long-term and typically involves a multitude of bank products and services over time.

Even when a bank contacts its customer for collection purposes, early contact is often in the customer's best interest and more servicing in nature. Banks often attempt collection activity in early stage delinquency, when a consumer is still living in the house, driving the car, or able to use the credit card that is the subject of the contact. Such early contact with consumers frequently helps them avoid a variety of potentially negative credit consequences, such as a negative furnishing to credit bureaus, charge-off , foreclosure, repossession, or loss of future credit by giving banks the opportunity to offer more options for resolution of the troubled debt, such as workout programs, payment extensions, and loss mitigation/foreclosure prevention actions. Especially with early-intervention, our members are able to provide possible assistance including reducing interest rates and in certain cases even having not-for-profit consumer credit agencies help the consumer with holistic credit restructuring. These types of actions benefit consumers by encouraging early discourse and early outreach by creditors while favorable solutions are still an option for the consumer.

Moreover, unlike third-party debt collectors, many banks' information technology systems are maintained at the product level, rather than the consumer level, to ensure compliance with regulations applicable to the specific bank products and services (e.g. Real Estate Settlement Procedures Act ("RESPA" or "Regulation X") for mortgage loans [19], and the Truth In Lending Act ("TILA" or "Regulation Z") for credit cards[20]). If the proposed amendment is adopted, a bank with a customer who has multiple loan products would be restricted in its ability to reach out to said customer in connection with each product. As one example, if, in a 7 day period, a creditor were to make a phone call to a customer with a past due home loan, send a text message to a customer with a late credit card payment, and mail a notice that a deposit account is overdrawn, under the Rule the creditor would not then be able to reach out further to advise the customer that their car is also at risk of repossession, since to do so would presumably risk violating the Rule's contact frequency limits. Such a result would be absurd and ultimately risks consumer harm that far outweighs any perceived benefits obtained by subjecting banks to the Rule.

If enacted, this proposed amendment would also have financial effects on the most financially struggling New Yorkers across low-and-moderate income (LMI) communities. In sum, these struggling New Yorkers would be robbed of the opportunity to work with their banking institutions to enter customized repayment programs. Instead, city regulations would force all delinquent accounts – from home to auto to credit – into the hands of debt collection agencies, exposing these New Yorkers to litigation and crippling them further financially.

[19] Real Estate Settlement Procedures Act, 12 CFR 1024 ("Regulation X").
[20] Truth In Lending Act, 12 CFR 1026 ("Regulation Z").

Cease and Desist Requests - §5-77(b)(4)

If banks are brought in under debt collection rules, they could prohibit banks from requiring customers to submit a written cease-and-desist request to stop collection communications. Once again, applied in the banking context this requirement will likely cause more harm than good. A written request provides clarity and certainty for both banks and their customers with respect to the specific debt communications at issue and helps ensure that banks can continue to communicate vital information to account holders concerning matters separate from the specified debt.

Electronic Communications - §5-77(b)

Section 5-77(b)(5) of the Rule appears to require prior express *written* consent from the consumer for a creditor to send servicing and collection communications electronically to consumers. Neither the Telephone Consumer Protection Act ("TCPA")[21] or any other federal or state law of which we are aware requires prior express *written* consent to send non-marketing related communications to customers. Typically, all that is required for collection texts and calls is prior express consent and nothing is required for collection emails. Were the Rule, with this proposed amendment, now apply to banks and other original creditors, in both substance and scope, New York City would likely become *the most restrictive jurisdiction in the country* with respect to the nature of consent required for banks to send non-marketing electronic communications to their customers. DCWP has provided no policy rationale explaining why existing federal and State laws – and even other municipal laws – that require only prior express consent are insufficient to protect New York City consumers and yet the measure's potential harms are manifest.

If this is not addressed, banks and other original creditors may be forced to curtail a range of beneficial electronic communications with consumers in order to avoid the additional uncertainty and related compliance burdens stemming from this requirement. For example, it is conceivable that once an account is past due, a bank will not transmit fraud alerts or payment reminders unless they receive the required consent envisioned by the Rule. This will also result in consumers not being able to use their preferred methods of communication, which increasingly are through electronic channels, and lead to a poor customer experience and frustration. Indeed, were the Rule applied to banks, millions of consumers who have routinely been receiving electronic communications from banks may stop receiving them in their preferred channel without significant notice or explanation, jeopardizing their ability to meaningfully engage with their creditors to regain access to credit, avoid repossession or other adverse legal action, and on a range of other matters including, as noted above, fraud alerts. Moreover, this outcome is unnecessary - consumers receiving electronic communications already have a method of stopping unwanted communications: by using widely-utilized, industry standard one-click opt-outs or requesting that creditors stop communications entirely. Requiring express written permission will not provide additional material consumer protections.

The DCWP should also confirm that creditors can presume that any email address, text message number, or social media account, for which they have been granted

[21] Telephone Consumer Protection Act, 47 U.S.C. § 227.

permission to communicate with by the consumer, is “private and direct.” Section 5-77(b)(5)(i) of the Rule specifies that electronic communication can be used only if it is "private and direct" to the consumer. While we believe this was only intended to modify the description of “specific electronic medium of communication,” the DCWP should either confirm and clarify that in the text of the rule, or clarify that email addresses, text message numbers, and social media accounts provided by and/or used by the consumer satisfy this provision. Without further clarity, banks and other creditors, if subject to the Proposed Amendment, may have difficulty determining which of these channels is “private and direct” and thus may have to curtail their methods of communication, regardless of consumer preference and expectation. This is particularly burdensome for customers who have already provided consent for their creditor to communicate with them using such a specified medium but who never confirmed that the medium was “private and direct”.

DCWP must also clarify the scope of the Rule’s requirement that creditors provide an “opt-out” response to consumers. Section 5-77(b)(5)(v) appears to require that creditors include an opt-out notice in every electronic communication and accept any response from a consumer indicating their desire to opt out of electronic communication. But as currently worded, it is not clear if any reasonable opt out method is acceptable or if creditors must only permit consumers to reply to an email with “STOP” (as opposed to, for example, including a link for the consumer to click to opt out). Many banks and other large creditors typically include a link in their emails to enable email opt outs but may not offer two-way email communication platforms. As currently worded and without clarification, this requirement could be read to require the development of specific electronic communication systems capable of monitoring and recognizing various opt-out phrases, and in various languages. The complexity and risk associated with implementing such systems may deter some creditors from utilizing electronic communication altogether and could frustrate consumers who prefer this method of interaction. Alternatively, DCWP should clarify that any opt-out method that complies with the FDCPA[22] is sufficient.

<u>Communications at Place of Employment - §5-77(b)(6)</u>

Section 5-77(b)(6) of the Rule prohibits debt collectors from communicating with consumers at their place of employment, including sending electronic messages to email addresses and phone numbers that the debt collector knows or should know are provided by the consumer’s employer. This requirement will pose significant challenges if applied to banks, as they will need to implement new systems to identify and exclude employer-provided contact information. The requirement also fails to account for consumers who are sole proprietors and may only use a single method of electronic communication for their personal and business communications. The additional costs associated with developing and maintaining such a system may further discourage banks from using electronic communication methods, despite their popularity among consumers.

[22] Fair Debt Collection Practices Act, 12 CFR Part 1006 (“Regulation F”).

Credit Bureau Reporting - §577-(e)

The Rule's restrictions on credit bureau reporting are not suitable for banks and if applied to banks will likely conflict with federal law. Moreover, application of the restrictions to banks could significantly interfere with their ability to lend. § 5-77(e)(10) of the Rule mandates that a validation notice be sent and a 14-day waiting period observed before a debt collector can furnish information to a credit reporting agency ("CRA"). As a general matter, however, in order to maintain a healthy credit ecosystem, banks typically begin reporting information to CRAs at the inception of an account. Indeed, under the federal Fair Credit Reporting Act, creditors are obligated to continuously update such reporting to ensure its integrity and accuracy.[23] While §5-77(e)(10) aligns with federal Regulation F, which requires a debt collector to wait a "reasonable period of time" after providing notice to a consumer before reporting the debt to a CRA, Regulation F applies to third-party debt collectors, not original creditors such as banks.[24] Consequently, compliance with the Rule would potentially require that banks violate concurrent federal legal requirements or, at a minimum, undertake the impossible task of ensuring that CRA's daily delete reported data in order to comply with the Rule's 14-day waiting period.

Requiring banks to curtail their reporting of data on charged-off debts could also significantly interfere with their ability to make responsible, accurate underwriting decisions. Once again, this will necessarily and negatively impact the price and availability of credit to New York City consumers without yielding any additional consumer benefit.

Validation of Debts - §5-77(f)

Banks and other original creditors should not be required to send debt validation notices to consumers under §5-77(f) of the Rule. The general purpose of a validation notice is to require a debt collector to prove that it has sufficient information about the debt so that it is appropriate for them to collect it, and to provide consumers with sufficient information about the debt so that the consumer can identify it and confidently engage with the entity attempting to collect it. This is particularly important if time has elapsed between when the creditor initially stopped collecting the debt and the resumption of communication, or where the debt has been charged off by the original creditor and sold or otherwise discharged to a third-party who then attempts to collect the debt.

Moreover, consumers already are subject to substantial protections under federal law with respect to dispute rights they may assert with banks and other creditors. In particular, consumers already may exercise broad rights to dispute and require proof of an alleged debt under the Truth In Lending Act ("TILA" or "Regulation Z") [25], Credit Card Accountability Responsibility and Disclosure Act of 2009 ("CARD Act")[26], and Fair Credit

[23] 15 U.S.C. § 1681s-2.
[24] 12 C.F.R. 1006.30(a)(1).
[25] Truth In Lending Act, 12 CFR 1026 ("Regulation Z").
[26] Credit Card Accountability Responsibility and Disclosure Act of 2009, 15 U.S.C. §§ 1601-1667f, 1681 et seq. and 1693 et seq.

Reporting Act ("FCRA")[27]. Application of the Rule's debt validation requirements to banks and other original creditors would therefore be duplicative, unduly burdensome, and potentially conflicting without affording any additional consumer benefit.

Indeed, the Rule's specific validation requirements are facially tailored for use in the third-party debt collection context and would cause significant confusion for consumers and banks alike. For example, §5-77(f)(1)(viii) of the Rule requires validation notices for open-ended loans to include an itemization of the debt as of the "itemization reference date," which is defined as the charge-off date, as well as any changes to the amount being collected or collection procedures since the charge-off date. The requirement under §5-77(f)(7) for creditors to provide a consumer with verification of the debt being collected requires that the creditor provide the consumer with a copy of the charge-off statement for the debt. Similarly, the Rule's restrictions under §5-77(f)(4) and (5) on "communications" following a consumer's receipt of a debt validation notice fail to contemplate the ongoing nature of a bank's relationship and contacts with its customers.

Once again, the utility of such requirements is clear in the context of third-party debt collection, where the relationship between the consumer and debt collector is involuntary, tenuous, and usually transitory. Banks, however, routinely communicate with their customers concerning debts before they have been charged-off and in many cases such communications are for the purposes of making loan modifications or other arrangements designed to avoid charge-off or eventual default. Application of the Rule to banks will likely hinder such efforts for fear of potential liability under the Rule. This risk is compounded by the Rule's vague definition of "debt" to include "[a]ny obligation or alleged obligation to pay money … whether or not such obligation has been reduced to judgment," and its requirement that validation notices be sent "five days after the initial communication with a New York City consumer in connection with the collection of a debt."[28]

The expanded debt itemization requirements under §5-77(f)(12) of the Rule, if also applied to Original Creditors, are nonsensical in the context and, as written, nearly impossible for banks and other creditors to implement. The general purpose of debt itemization in the collection context is to ensure that entities *subsequent* to the original creditor have complete and accurate information and documentation concerning the debt in order to substantiate and prove the debt to the consumer. The information provided through debt itemization, however, is duplicative of the timely account information regularly and directly provided to consumers by banks and other original creditors through, for example, statements and other correspondence that characterize their ongoing account relationship. Applying the requirement to banks and other creditors would impose costly and unnecessary compliance burdens as well as consumer confusion for no clear purpose.

More fundamentally, as currently written this provision, especially if modified by the Proposed Amendment, is vague, confusing and likely impossible for banks to implement. By its express terms, §5-77(f)(12) would require banks to treat the expanded itemization

[27] Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x.
[28] §5-76; §5-779f)(1).

requirement, once triggered, as "an obligation to provide verification of the debt" in accordance with §5-77(f)(7) of the Rule. That provision, however, generally only requires debt collectors to provide a consumer with one additional debt verification after the provision of a first verification. §5-77(f)(12) appears to contain no similar limiting language, creating a potential loophole that could permit consumers to indefinitely delay collection activities by repeatedly requesting an expanded debt itemization under §5-77(f)(12).

In summary, while we share the Department's commitment to protecting New Yorkers from abusive debt collection practices, the Proposed Amendment represents a substantive and unwarranted departure from established State and federal regulatory frameworks, as well as dramatically changes the implications for its own initial Rule. Adoption of this new proposal risks significant harm to New York City's banking sector and its consumers, undermining the benefits of existing banking relationships without adding meaningful consumer protections. We respectfully urge the DCWP to pause or withdraw this rulemaking and instead re-propose the amendment through a proper process under CAPA, ensuring sufficient notice and opportunity for meaningful stakeholder engagement. We thank you for the opportunity to provide our views and would welcome the chance to discuss these concerns further.

Respectfully Submitted,
THE NEW YORK BANKERS ASSOCIATION